

Serial No. 09/124,043

Page 12

REMARKS

This response is intended as a full and complete response to the non-final Office Action mailed July 28, 2005. In the Office Action, the Examiner notes that claims 23, 24, 27 and 32-59 are pending of which claims 23, 24, 27, 32-51, 53-56 and 59 are rejected and claims 52, 57 and 58 are objected to. By this response, the claims continue unamended. Arguments refuting the Examiner's position are provided below.

In view of the following discussion, Applicants submit that none of the claims now pending in the application are obvious under the provisions of 35 U.S.C. §103.

It is to be understood that Applicants do not acquiesce to the Examiner's characterizations of the art of record or to Applicants' subject matter recited in the pending claims. Further, Applicants are not acquiescing to the Examiner's statements as to the applicability of the art of record to the pending claims by filing the instant response.

OBJECTIONS

The Examiner has objected to claims 52, and 57-58 as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants respectfully traverse the rejection.

Applicants thank the Examiner for indicating the allowable subject matter with respect to claims 52 and 57-58. However, in view of the discussion set forth herein, Applicants believe that rejected base claim 51 is allowable. It therefore follows that Applicants believe that dependent claims 52 and 57-58 are also allowable. Therefore, Applicants respectfully request that the foregoing objection to claims 52 and 57-58 be withdrawn.

In any event, Applicants expressly reserve the right to amend the objected to claims in a subsequent response, if necessary.

Rejections**35 U.S.C. §103****Claims 23, 24, 27, 32-51, 53-56 and 59**

386804-1

Serial No. 09/124,043

Page 13

The Examiner has rejected claims 23, 24, 32-51, 53-56 and 59 under 35 U.S.C. §103(a) as being unpatentable by U.S. Patent No. 5,003,384 to Durden (hereinafter "Durden") in view of U.S. Patent No. 4,745,549 to Hashimoto (hereinafter "Hashimoto"). Applicants respectfully traverse the rejection.

The test under 35 U.S.C. §103 is not whether an improvement or a use set forth in a patent would have been obvious or non-obvious; rather the test is whether the claimed invention, considered as a whole, would have been obvious. Jones v. Hardy, 110 USPQ 1021, 1024 (Fed. Cir. 1984) (emphasis added). Moreover, the invention as a whole is not restricted to the specific subject matter claimed, but also embraces its properties and the problem it solves. In re Wright, 6 USPQ 2d 1959, 1961 (Fed. Cir. 1988) (emphasis added). The Durden and Hashimoto references alone or in combination fail to teach or suggest Applicants' invention as a whole.

Applicants' independent claim 23 recites (independent claim 24 recites similar relevant limitations):

An apparatus that gathers programs watched data, comprising:
a plurality of terminals connected to corresponding televisions and to a television program delivery system, each of the terminals including a memory that stores program access information; and
a receiver coupled to the plurality of terminals, the receiver receiving the program access information, wherein the program access information is stored as programs watched data in a programs watched matrix,
wherein the programs watched data is stored in a programs watched matrix and is recorded as counts, the counts corresponding to the number of times a program category is watched at the associated terminal, wherein each of the associated terminals is assigned a unique programs watched matrix, and wherein the unique programs watched matrix is updated as additional program access information is provided by the associated terminal.

The Durden reference merely discloses a set top interface for transacting within the context of an impulse pay-per-view television system. Specifically, the Durden reference depicts various functions adapted for recognizing, authorizing and billing to a user pay-per-view events.

In contrast to the above-quoted claim language, the Durden reference fails to disclose or suggest at least "including a memory that stores program access information....." Specifically, the portion of Durden cited by the Examiner (column 6,

386804-1

Serial No. 09/124,043

Page 14

lines 57 through 61) merely provides that a "memory 21" is used to store "data associated with the purchase of that event" rather than the claimed "program access information". Purchase information is simply not the same as program access information. Purchase information pertains to the authorization, billing codes and so on associated with purchasing a pay-per-view event. Program access information within the context of the claimed invention pertains to the actual access of content. Broadly speaking, the access of content includes any type of content received and/or presented via the set top box.

The Examiner contends that the program access information is disclosed or suggested by the interactive pay per view program purchase statistics. The applicants respectfully disagree.

It is specifically noted that the Durden reference is only applicable to impulse pay-per-view transactions. Impulse pay-per-view purchases are stored in the customer module. The customer module stores this information so that subsequent billing of the customer may be provided, not subsequent review of the customer access of the content.

It is noted that the purchase of an impulse pay-per-view event does not necessarily mean that the user or customer has viewed that pay-per-view event. However, such event purchase will result in a billing of the customer. To the extent that viewing statistics are stored, such statistics are stored in the system manager and not in the set-top terminal.

With respect to the claimed "programs watched matrix" the applicants strongly urge the Examiner to consider the significant differences between the data points noted with respect to Durden and the claimed structure. First, as noted above, the Durden arrangement does not store programs watched data. Second, to the extent that the Durden arrangement stores interactive pay per view event purchase the data, such data is simply not stored as a matrix.

Conceptually, a matrix comprises a plurality of data elements arranged in a logical matter where like data elements are grouped together. No such storage is present within Durden. That Durden stores one or more data elements associated with a interactive pay per view purchase does not mean that a storage matrix is

386804-1

Serial No. 09/124,043

Page 15

contemplated by Durden. Absent the necessity of such a storage matrix, the Examiner cannot impute or otherwise find implicit within Durden a storage matrix such as claimed.

As noted by the Examiner, the Durden reference fails to disclose "if the programs watched data is recorded of counts, the count corresponding to the number of times a program category is watched at the associated terminal." As noted above by the applicant, programs watched data is not stored; rather, programs purchased data is stored.

Thus, the Durden reference fails to disclose or suggest the invention of claim 23. Furthermore, the Hashimoto reference fails to bridge a substantial gap as between the Durden reference and Applicants' invention.

In particular, Hashimoto discloses a method of and apparatus for optimal scheduling of television programming to maximize customer satisfaction. In essence, Hashimoto operates to determine which programs are suitable for individual subscribers based upon their preferences. Subscriber complaints about poor choices made by the Hashimoto algorithms are subsequently utilized to refine the algorithms such that the method and apparatus of Hashimoto tends to improve in its selection of programs for individual subscribers.

The Examiner contends that the Hashimoto complaint coefficient $P_c(j)$ reflects how often a given user watches a certain type of programming at a specific terminal. The applicants respectfully disagree. Even if this were true, such a teaching would still not disclose or suggest the claimed invention, since suggestions made by the Hashimoto algorithm that are appropriate to the customer will not result in a complaint (i.e., no data related to non-complained about content). However, the complaint coefficient simply does not provide the information suggested by the Examiner. Of interest is FIG 9, depicting a flow diagram of a process where the complaints are sometimes discarded, sometimes stored and otherwise just used to refine the preference information associated with a subscriber (i.e., no count of viewings, etc.).

Even if the Durden and Hashimoto references could somehow be operably combined, the resulting combination would still fail to disclose or suggest the claimed invention. At most, such a combination would result in a system in which impulse pay per view preferences of a subscriber could be refined over time.

386804-1

Serial No. 09/124,043

Page 16

Since the combination of Durden and Hashimoto fails to teach or suggest the claimed invention, the applicants submit that independent claim 23 is patentable. Moreover, since independent claim 24 includes relevant limitations similar to those discussed above with respect to claim 23, it is respectfully submitted that independent claim 24 is also patentable for at least the reasons discussed above with respect to claim 23.

With respect to claim 27, the applicants reiterate the above discussion of the Durden and Hashimoto references. Of particular interest with respect to claim 27, the applicants note that the Durden reference merely stores purchase related information pertaining to pay per view events brought her then program access information. Moreover, to the extent that purchase related information is stored, such information is not stored in a matrix as claimed.

As a noted by the Examiner, the Durden reference "the fails to disclose if the response message includes a leading and trailing flag, and address field including the address of the terminal, a geographical region, and terminal identifier." Applicant agrees that a Durden reference lacks these specifically noted teachings as well as suffering from the deficiencies discussed above with respect to claims 24 and 27.

The Hashimoto reference fails to bridge the substantial gap between the Durden reference and to the claimed invention. The questionnaire mentioned by the Examiner is simply not a light to any of the structure of claim 27. It appears that the Examiner equates the questionnaire of Hashimoto to the response message of the claimed invention. The applicants strongly disagree.

The questionnaire of Hashimoto provides and in the show set of user indicated preferences for use by the Hashimoto program. This questionnaire is user entered data which is propagated back to a server from a user terminal, the server subsequently using the questionnaire data to select initial preferences. By contrast, the response message of claim 27 is an electronic message from a user terminal to a controller as part of a polling routine that is periodically performed.

Therefore, it is respectfully submitted that claim 27 is patentable over the Durden and Hashimoto references, either singly or in any allowable combination.

386804-1

Serial No. 09/124,043

Page 17

With respect to claimed 32, the Examiner is directed to the applicants discussion above of the Durden and Hashimoto references. As previously noted, neither reference discloses or suggests the gathering of "programs watched data", the "counting the programs watched" or matrix storage of such data. The complaint coefficient of Hashimoto does not operate in a manner claimed with respect to the claimed invention, and the two references lack disclosure or suggestion, either implicit or explicit, of large portions of the claimed invention.

Therefore, it is respectfully submitted that claim 32 is patentable over the cited references, either singly or in any allowable combination. Moreover, since claims 33 through 38 depend from claim 32 and recite additional limitations therefrom, it is respectfully submitted that these claims are also patentable for the reasons discussed above with respect to claim 32.

With respect to claim the 39, the applicant directs the Examiner's attention to the above discussion of the Durden and Hashimoto references. As previously noted, the cited references failed to disclose "gathering programs watched data" and also fail to "determine the frequency of programs watched by the set top terminal". Specifically, the storage of pay per view purchase information does not equate to the storage of programs watched data, as previously discussed.

Therefore, it is respectfully submitted that claim 39 is patentable over the cited references, either singly or in any allowable combination. Moreover, since claims 40 through 48 depend from claim 39 and recite additional limitations therefrom, it is respectfully submitted that these claims are also patentable for the reasons discussed above with respect to claim 39.

With respect to the remaining claims, the Examiner is directed to the arguments presented above. Specifically, the arguments pertaining to claims 32-34, 35-36 and 32 or applicable to, respectively, claims 49-51, 54-55 and 59. Similarly, the arguments pertaining to claims 39 and 42 or applicable to claim 43; the argument pertaining to claim 33 is applicable to claims 44 and 53.

As such, Applicants' submit that independent claims 23, 24, 27, 32, 39, 43, 49, 51 and 59 are non-obvious and fully satisfy the requirements of 35 U.S.C. §103 and are patentable thereunder. Furthermore, each of the remaining claims depends from one of

386804-1

Serial No. 09/124,043
Page 18

these claims and recite additional limitations therefrom. Therefore, these remaining claims are patentable for lease the reasons discussed above with respect to the claims from which they depend. Therefore Applicants respectfully request that all of the rejections be withdrawn.

SECONDARY REFERENCES

The secondary references made of record are noted. However, it is believed that the secondary references are no more pertinent to Applicants' disclosure than the primary references cited in the Office Action. Therefore, Applicants believe that a detailed discussion of the secondary references is not necessary for a full and complete response to this Office Action.

CONCLUSION

Thus, Applicants submit that none of the claims presently in the application are obvious under the provisions of 35 U.S.C. §103. Accordingly, both reconsideration of this application and its swift passage to issue are earnestly solicited.

If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 10/28/05

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386804-1